

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

THOMAS H CLAY,

Plaintiff,

VS.

A. AMBRIZ, *et al*,

Defendants.

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CIVIL ACTION NO. C-12-53

**ORDER ADOPTING
MEMORANDUM AND RECOMMENDATION
AND TO DENY PLAINTIFF'S MOTION
TO PROCEED *IN FORMA PAUPERIS* ON APPEAL**

Pending before the Court is Plaintiff's Application to Proceed *In Forma Pauperis* on Appeal (D.E. 28, 30). On May 21, 2012, United States Magistrate Judge Brian L. Owsley issued a Memorandum and Recommendation (D.E. 33), recommending that Plaintiff's Motion be denied. Plaintiff timely filed his Objections (D.E. 34) on June 4, 2012.

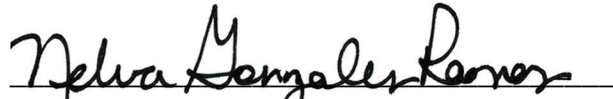
Plaintiff's objections include multiple arguments that have already been addressed by this Court. D.E. 18. Those arguments will not be addressed again. The bulk of his current objections are further centered around the argument that, if his previous "strikes" survived their respective initial section 1915(g) screenings, they cannot possibly be frivolous or malicious nor could they state claims upon which relief cannot be granted. Plaintiff fails to appreciate the difference between a court's assessment of a claim on its face versus the assessment that comes with additional evidence against the claimant. A court's more generous view of a claim before evidence has been submitted does not

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prevent the evidence from revealing a claim to be frivolous or otherwise violative of section 1915(g). Nothing about the initial screening inoculates Plaintiff against later findings commensurate with later substantive or procedural developments in the case.

Having reviewed the findings of fact, conclusions of law, and recommendations set forth in the Magistrate Judge's Memorandum and Recommendation, as well as Plaintiff's Objections, and all other relevant documents in the record, and having made a *de novo* disposition of the portions of the Magistrate Judge's Memorandum and Recommendation to which objections were specifically directed, the Court **OVERRULES** Plaintiff's Objections and **ADOPTS** as its own the findings and conclusions of the Magistrate Judge. Accordingly, Plaintiffs Application to Proceed In Forma Pauperis on Appeal (D.E. 28, 30) is **DENIED**.

ORDERED this 13th day of June, 2012.


NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE